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February 21, 2002

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

**Re: Broadview Networks, Inc., D.T.E. 02-14**

Dear Secretary Cottrell:

The Attorney General files this letter as his Brief in response to the proposal of Broadview Networks, Inc. ("Broadview") to shutdown the telecommunications services of over two hundred of its business customers. The Attorney General recommends that the Department of Telecommunications and Energy ("Department") order Broadview to keep the customers' telecommunications services in operation until such time as Broadview certifies to the Department that those customers have found alternative or replacement service in order to avoid substantial harm to their businesses.

## **Background**

On November 16, 2001, Net2000 Communications Services, Inc. ("Net2000")<sup>1</sup> filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in order to facilitate the sale of substantially all of its telecommunications services assets to Cavalier Telephone, LLC ("Cavalier").<sup>2</sup> See Exh. DTE-1 (company announces it filed voluntary petition in order to effect this transaction); Exh. BV-10. Cavalier, which is not licensed to do business in Massachusetts, then entered into an agreement with Broadview to sell or otherwise transfer to the Company certain Net2000 switching and network assets in Massachusetts. See Exh. DTE-2; Exh. BV-2; Exh. BV-4.

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<sup>1</sup> Net2000, which was licensed to do business in Massachusetts, requested on December 28, 2001, that the Department cancel its various telecommunications services tariffs. See Exh. DTE-10.

<sup>2</sup> The Bill of Sale and Assignment which sells the assets of Net2000 to Cavalier has an effective date of January 21, 2002, and references (1) an Asset Purchase Agreement dated November 15, 2001; (2) an Amendment dated December 5, 2001; and (3) a Memorandum of Understanding effective January 11, 2002. See Exh. BV-10. The Attorney General notes that the Asset Purchase Agreement predates the Net2000 bankruptcy.

On January 11, 2002, Cavalier and Broadview issued a notice, on joint letterhead, to the Net2000 customers advising them that unforeseen time constraints prevented Cavalier from taking over the customers' service. However, the notice further indicated that in order to ensure continuity of service, the customers' service would be transferred to Broadview, effective January 21, 2002. *See* Exh. BV-2. The notice also informed customers that "[i]n order to ensure you stay connected, you must sign a new service agreement to transfer your service to Broadview Networks." *Id.* at 1. Cavalier and Broadview then sent a second notice on January 25, 2002, advising that Broadview began serving the customers on an interim basis as of January 24, 2002, and that customers should make immediate arrangements with Broadview or another carrier in order to avoid service termination scheduled for February 25, 2002.<sup>3</sup> *See* Exh. BV-4.

On February 14, 2002, the Department opened an investigation, pursuant to its authority under G.L. c. 159, §§ 12 and 16, into the regulations, practices, equipment, appliances and service of Broadview Networks, Inc. The investigation was commenced in response to the complaints of numerous business customers that Broadview intended to terminate their telecommunications services on February 25, 2002. In response to the potential loss of service and resulting economic hardship, the Department held an Emergency Hearing on February 19, 2002, to address the issues raised by the customer complaints.

### **Emergency Hearing**

During the emergency hearing, customers or their representatives testified and complained that they faced immediate shutdown of their telecommunications services on February 25, 2002. *See* Tr., pp. 11-50. Customers complained that Broadview had reneged on its promise to keep them connected if they switched over to the Company and also complained that the Company reneged on its promise to provide service comparable to their existing service. *Id.* at 11-50. Customers also testified that Broadview had not provided them with sufficient time within which to obtain alternative telecommunications services. *Id.* Many customers indicated that the loss of their telecommunications services may require them to lay-off workers or close their businesses. *Id.* The customers requested that the Department stop Broadview from terminating service on February 25. *Id.*

Broadview contends that it *only* purchased from Cavalier certain switches and the right to solicit the customers and that it did not purchase the service accounts themselves. *See* Tr., p. 57. Additionally, despite the fact that Broadview is presently providing service to the customers on an interim basis, Broadview also contends that the customers are not really its customers since very few of the customers (approximately seventeen (17)) actually signed an agreement with the Company to obtain their service from Broadview. *See* Tr., pp. 99, 127, 146-148. Finally, Broadview contends that the Company is not in the financial position to incur the substantial cost of keeping the customers' service running beyond February 25, 2002.

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<sup>3</sup> Broadview failed to provide the Department with notice of the intended shutdown. *See* Tr., p. 76.

## Recommendation

The Attorney General applauds the Department for its swift actions to prevent the telecommunication service shut-off to Broadview's customers that would likely jeopardize the health and welfare of the citizens of the Commonwealth.

The Attorney General recommends that the Department order Broadview to keep the customers' telecommunications services running until such time as Broadview certifies to the Department that those customers have found alternative or replacement service in order to avoid substantial harm to their businesses.

Verizon has expressed a willingness to facilitate the transfer of Broadview's customers to alternative service providers. However, Verizon indicated that it would need circuit identification information (RR-DTE-7), and that upon receipt of this information, that it would require approximately two weeks time to make the requested and related network changes. Tr., pp. 198-199. The Attorney General requests that the Department approve Verizon's proposed course of action.

Broadview's contentions that it only purchased equipment and is not really the service provider of the customers (i.e., the customers aren't really its customers) is not supported by the record. Broadview is clearly providing service on an interim basis (*see* Exh. BV-4; Tr., p. 138-139) and has in fact contracted with Cavalier to do so. *See* Exh. BV-2; Exh. BV-4; Tr., p. 138-139. The Company purchased the switches from Cavalier with the knowledge that the customers' telecommunications access lines were connected to those switches and notwithstanding claims of financial hardship,<sup>4</sup> Broadview should not be allowed to abandon its service to these customers.

The Department has authority and the obligation to order Broadview to maintain the customers' service. G.L. c. 159, §§ 12 and 16. *See Department of Public Utilities v. Eastern Massachusetts Railway Company*, 327 Mass. 450 (1951). (The Department had authority to order company to resume operations of bus route which had been discontinued). The Department should require Broadview to bear both the fruits and burdens of its business deal with Cavalier.<sup>5</sup>

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<sup>4</sup> The Company provided contradictory testimony on the issue stating that it could maintain service beyond the February 25 deadline; and also, the Company's financials are unaudited. *See* Tr., pp.194-195; Exh. AG-1; RR-DTE-4.

<sup>5</sup> Prior to entering its agreement with Cavalier, Broadview was aware that Cavalier was not authorized to do business in Massachusetts and that the continuation of the customers' service was a potential problem. *See, e.g.,* Tr., p. 137; Exh. DTE-7, Exh. DTE-8, Exh. DTE-10 (possible overlap in representation by the same law firm amongst Net2000, Broadview and Cavalier). Indeed, the record demonstrates that Broadview facilitated the sale between Net2000 and Cavalier. Tr., p. 60. Despite the

Customers should be allowed sufficient time to procure alternative telecommunications services.<sup>6</sup> The Department should require Broadview to honor its representations and commitments to the customers.

## **Conclusion**

For the reasons discussed above, the Attorney General recommends that the Department issue an Order requiring Broadview to keep the customers' telecommunications services operating until such time as Broadview certifies to the Department that those customers have found alternative or replacement service in order to avoid substantial harm to their businesses.

Very truly yours,

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foreseeable service interruption problem to customers, Broadview nevertheless opted to go forward with the business deal with Cavalier and undertook to provide service on an interim basis to customers to seemingly facilitate that deal.

<sup>6</sup> Several customers attested to the fact that it was common knowledge that in Massachusetts, it takes an average of four to six weeks for Verizon to establish a local loop to allow a switch from one service provider to another provider with respect to T1 lines and other comparable enhanced services lines. Tr., pp. 23, 41.